

MINUTES



REGULAR MEETING OF THE PLANNING COMMISSION, CITY OF HAYWARD, Council Chambers

Thursday, June 28, 2001, 7:30 P.M.
777 "B" Street, Hayward, CA 94541

MEETING

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Acting Chairperson Halliday, followed by the Pledge of Allegiance.

ROLL CALL

Present: COMMISSIONERS Bogue, Halliday, Sacks, Thnay, Williams, Zermeno
Absent: COMMISSIONER None
CHAIRPERSON Caveglia

Staff Members Present: Anderly, Ameri, Conneely, Ehrental, Garcia, Looney

General Public Present: Approximately 30

PUBLIC COMMENT

There were no public comments.

AGENDA

1. **Request by Calpine/Betchel Joint Development** for the City of Hayward to make a determination that a power plant (Russell City Energy Center) use at 3636 Enterprise Avenue is consistent with the General Plan and a use similar to a primary use permitted in the Industrial District
2. **Request by Golden Gate Broadcasting Company, Inc.** for approval of Use Permit Application No. 01-160-11 to relocate its radio transmitter facilities from 3636 Enterprise Avenue to City-owned property near the western terminus of West Winton Avenue on a closed landfill site

PUBLIC HEARINGS

1. **Request by Calpine/Betchel Joint Development** for the City of Hayward to make a determination that a power plant (Russell City Energy Center) use at 3636 Enterprise Avenue is consistent with the General Plan and a use similar to a primary use permitted in the Industrial District

Planning Manager Anderly gave an overview of the project. She noted that there would be other times for public comments on this project in future hearings, particularly regarding environmental concerns and the plant design. This hearing was specifically held to determine whether this plant would be considered an Industrial or Manufacturing use in the zoning district and conform with the General Plan Map designation.

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Commissioner Williams expressed concern about transforming natural gas to power and calling it manufacturing.

Planning Manager Anderly suggested that this will be a manufacturing plant like Pepsi and Berkeley Farms in that a product is created, i.e., electricity.

Commissioner Williams said he could understand that but expressed concern that this plant was emitting something that could go into another form.

Acting Chairperson Halliday read from the zoning regulations and asked about other industrial and the zoning in the area and whether this plant would meet the definition.

Planning Manager Anderly said that in staff's opinion the scope of the use is manufacturing and the Planning Commission is being asked to state their opinion relative to this determination.

Acting Chairperson Halliday asked whether the Commission would have more opportunity to decide this issue. She said they were not really capable of making judgements on a lot of this information without more data. She was told that when the California Energy Commission holds its hearings, the City's governing bodies and the public are encouraged to comment.

Commissioner Zermefio asked when the specific plans would come.

Planning Manager Anderly indicated the applicant was present to speak.

The public hearing opened at 7:47 p.m.

Barry Lubovisky, Trades Council, representing the 40,000 union members appeared in support of this project. He noted that it would bring necessary energy to the Bay Area.

Frank Delfino, Castro Valley, said he is not against the plant but some of its design features. He noted that the fencing around the structure is a hazardous condition for migratory birds. He suggested they keep the plant be designed to prevent birds from perching on it.

Janice Delfino, Castro Valley, representing HASPA, expressed concerns about the design of the cooling towers. She also mentioned the fencing and suggested that it will encourage predatory perching since there are other wildlife out there that would fall prey to perching raptors.

Commissioner Halliday said she was not clear on the Commission's ability to further comment on the project.

In response, Economic and Development Director Ehrenthal described the environmental process. She noted that there would be a California Energy Commission (CEC) subcommittee of two who will look into all the environmental issues. Information will continue to be updated. She commented that there is also a public advocate, CEC Public Advisor, Roberta



Mendonca, 1-800-822-6228. The process will include public input.

Commissioner Williams commented again that the question before the Commission was simply whether this is consistent with the General Plan.

Ms. Delfino commented that the power plant is fine but the netting is a problem with respect to birds.

Ed Mullins, Chamber of Commerce, Governmental Relations Council, noted that the Chamber is a zealous guardian of the industrial area. They would welcome this to Hayward.

Barbara Herringer-Swarr, Hayward, said she was interested in how you can go through the process without an environmental report. She said there were too many assumptions, particularly regarding the emissions. She said she would like more information.

Commissioner Thnay again asked for a clarification from staff regarding the issue before the Commission and whether it is deciding whether to recommend to the City Council that the use is consistent with Industrial Use. They were not approving the project. It was noted that the environmental report would come during the CEC process.

Planning Manager Anderly commented that there would be a massive environmental review. This is merely the first hearing for this one issue. The power plant is under the auspices of the State Energy Commission.

Obray Van Buren, Hayward, said that this area was taken over by eminent domain. He described himself as a longtime resident who serves on many union boards. He explained that he knows the effect of municipal decisions on those who work. Regarding the emissions and pollution, he commented that these new plants are 90 percent more efficient than those in the past. He particularly liked the location of the plant since they can use recycled water. He asked for approval of this plant, saying it is for the common good.

Rich Corvello, Pleasanton, representing the Electricians Union, discussed the energy situation and the need for this sort of thing.

Scott Raty, Hayward Chamber of Commerce, explained that the plant was being hurried along, not to sacrifice any environmental review, just hoping to eliminate the redundancies. As to whether it is compatible in the Industrial District, he said yes, since it is a manufacturing facility. He noted that the Chamber is 100 percent behind it.

The public hearing was closed at 8:10 p.m.

Commissioner Bogue said he was disturbed that there was such a small staff report. He said he was particularly interested in Mr. Mullen's comments that it will not do damage to the area.

He agreed that it would not. He **moved**, seconded by Commissioner Sacks, **staff's recommendation to the City Council.**

Commissioner Zermeno commented that he agreed that it is manufacturing, and would support the motion.

Commissioner Williams said he had questioned the manufacturing of energy. He noted that he was convinced from the testimony that it was. There is also a need for these plants in California.

Commissioner Thnay said there was a question as to the consistency with Industrial District. He thought it was. He then asked how the City would be able to ensure that the comments and conditions of the people and the City of Hayward are considered throughout the process.

Acting Chairperson Halliday commented that the Commission had a limited role in making this determination. She noted that although this report was short, they have received other information about the Plant, including the big public meeting and a trip to the energy plant in Pittsburgh. She commented that they were not looking at the environmental concerns at this point.

Commissioner Sacks encouraged everyone to stay alert to any meetings on this issue. She commented that there were very few who participated in the tour or the previous meeting at Centennial Hall.

Commissioner Bogue commented on their visit to the plant in Pittsburgh and how quiet the plant was. He noted that it did not have a great impact.

The motion passed unanimously 6:0, with Chairperson Caveglia absent.

2. **Request by Golden Gate Broadcasting Company, Inc.** for approval of Use Permit Application No. 01-160-11 to relocate its radio transmitter facilities from 3636 Enterprise Avenue to City-owned property near the western terminus of West Winton Avenue on a closed landfill site

Planning Manager Anderly described the proposed relocation to another property owned by the City of Hayward. She indicated that staff had attempted to meet all environmental concerns but had learned that East Bay Regional Park District still had outstanding issues. Staff had thought all their concerns were met. In light of concerns expressed by various participants, she suggested modifying Condition 13 by adding the following introductory clause: "Unless preempted by the FCC..." and adding Condition 18.b., "The East Bay Regional Park District (EBRPD) has a significant investment in the entrance to the Hayward Regional Shoreline, which entrance is accessed by both District employees and the general public. In recognition of the foregoing, prior to the issuance of a building permit, the applicant shall meet with the City and EBRPD representatives to address the health and safety issues of park staff and visitors as described in the District's letter dated June 14, 2001." She noted that the new location is on a rise, on a hill and at the entrance to the trail system. She mentioned that concerns include the potential for bird perching and for birds to strike the towers. The new

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towers are more visible than the towers in their current location. She noted that at the present location no sign of bird perching or strikes have been noted. She suggested all parties could meet and probably settle a number of issues before the presentation to the City Council at the meeting in July.

Commissioner Sacks asked about the towers. She was told that the new towers will be similar in size and structure to those presently located in the area (i.e., the KTCT towers).

Planning Manager Anderly said there were two major environmental concerns, birds striking the tower, and perching on them.

Commissioner Zermeno asked about the guidewires. He was told there are none and the towers are not connected to each other in any way. To do this without guidewires, the towers have to be made bulkier.

The public hearing opened at 8:30 p.m.

Frank Delfino, Castro Valley, suggested wrapping the towers in chicken wire, since the peregrine falcons have good eyesight. Some of these birds are not very bright. He said the question is, are you going to take a stand or pass it along to the federal agencies.

Janice Delfino, Castro Valley asked members to delay their vote for further information.

Deputy Director of Public Works Ameri said other uses might not be appropriate for this site. This is a passive use.

Robert Doyle, EBRPD, said they appreciate the effort by staff and the City Manager to accommodate their concerns. He said the proposed area is not an industrial area. He noted that the Parks System has a \$20 million investment in this area and that the towers are proposed for the entrance and the parking lot to the whole system. He said it might cause an economic negative to the District. He added that these are legitimate concerns. He commented that they do not think all the answers are in. The issue of locating communication sites near others is a very difficult question. He asked that the City of Hayward address their concerns. He suggested that what is proposed does not adequately mitigate the whole issue. He expressed concern about the electronic equipment needed by park personnel for emergencies and this park needs to be safe and friendly. He cited a security guard home in the area and the potential danger to the staff at this location.

Commissioner Williams said he did appreciate these comments and asked about the facility rented to the security guard.

Mr. Doyle said it is a mobile home and had been there for over 10 years. They were in the process of renovating the home but have stopped until further answers are forthcoming. He

added that they were pleased with the new additional condition, but would like to see something more specific in Condition 13, since he believes there is a possibility that their communication equipment might not work adequately with the second tower in place.

David Van Atta, representing KTCT, said they have major concerns regarding the move. They have been in their present location for almost 20 years and though the radio stations currently interact with each other, there is a concern with relocating the radio transmission facility in such close proximity to their own towers. He noted that they have an existing use, and are concerned with protecting their rights. He said the fiscal impact should not be a burden on them. He responded to various questions from commissioners. He offered an additional condition intended to protect their rights.

Economic and Development Director Ehrental said that since the proposed additional verbiage was extensive, she would hesitate to offer to adopt it. She noted that this is the kind of discussion that can happen prior to presenting the issue to Council.

Commissioner Thnay noted that the comments and concerns are legitimate. Any motion support would need to include more information to resolve these concerns, since they have been there first.

Planning Manager Anderly suggested that the Mitigated Negative Declaration should identify the impacts, and staff might suggest exploring specific wording to mitigate this impact.

Rob Douglas, applicant with Salem Communication, said they have been at their current site for 34 years. He said they would be able to solve their interference issues with the other station. He noted that they are prepared to do so at their own cost. He added that if they cannot solve the problems, they cannot move there. He asked for time to work on the problem and try to come to a viable solution with KTCT and the Park Service. He noted that some of these issues are FCC concerns. He said they welcome the opportunity to sit down with these two to solve any problems. He described the four towers for directional signals, and commented that they will build the same towers as those at KTCT.

Commissioner Williams asked whether, at any of their locations throughout the country, they have this proximity of closeness.

Mr. Douglas explained that at many of the transmission towers they actually have duplexing and at some, triplexing, so yes, they do have experience with this. He emphasized that they would like to work this out with staff rather than adding new conditions and that the proper language between attorneys could be provided.

Benjamin Dawson, who described himself as a consultant telecommunications engineer, took issue with Mr. Douglas. He said they had not been willing to provide written agreement regarding compensation and working together. He explained that it is useful to define the concerns since the issue is the proper operation of the antennas themselves. Condition 13 cannot stand as written. He said the existing facility must undergo modifications. He said they have no objection to the move but would like to remain whole. He added that they need more information on the proposal as well as written assurance of compensation.



Dena Osborne, San Leandro, a property manager in the area, asked the Commission to make sure any business impacted by the towers is made whole. She said their concern is with the electronic equipment in the nearby office buildings.

Sheila Junge, Hayward, submitted a letter asking that the mitigated negative declaration not be approved. She discussed the proposed location as right next to the West Winton entrance to the Shoreline with an access and trail at this location. She argued that the new and old locations are not similar and the new towers will loom over the visitor's entrance. She commented on the burrowing owls in the area and their habitat and nesting seasons.

Jim Leaghy, with the Calpine project said he spoke with the station, and told them they will be made whole and that their attorneys are drafting the language now. He said they would all work together with staff to resolve the issues before the Council hearing in July.

The public hearing closed at 9:31 p.m.

Commissioner Sacks commented that this was a very interesting issue. She noted that many of people who spoke, want to work together.

Assistant City Attorney Conneely said that any changes to the conditions should be done by virtue of direction to staff to work with KTCT to reach an amicable solution to their concerns.

Commissioner Williams said it may be difficult, but it seems their job is only to consider adopting the recommendation to Council. He **moved**, seconded by Commissioner Zermeno, to recommend that the City Council adopt the mitigated negative declaration for relocation of the KFAX radio towers and approve the permit for the construction of the KFAX towers. He noted that he was including the language of Condition 18.b., as recommended by staff.

Commissioner Halliday asked Commissioner Williams whether his motion included asking staff recommendations to work out specific language of Condition 13.

Commissioner Bogue said he would favor the motion but would like more direction for language in condition 13. The FCC does cover the two stations. However, concerns expressed by the Hayward Business Complex is not included in this motion. He suggested that there should be no interference with business electronics in the area and asked that the Commission highlight this concern.

Commissioner Williams said his major intent is not to cause any harm to business in the area.

Commissioner Halliday expressed concern about Condition 13 and the modifying language by staff. She said she appreciated that this item also relates to the first item and asked whether there was some reason to decide this issue now.

Community Economic & Development Director Ehrenthal explained that the timing of the items is such that the power plant issue is already in application form, and a finding needs to be made in a time period. One issue is site control. It would not be clear that they had control of the site of this issue is not settled. She commented that this also needs a finding of zoning ordinance consistency since it is both in the Flood Plain and Industrial zoning districts. A determination needs to be made as to whether these towers are considered a broadcast use and qualify for the zoning.

Commissioner Halliday said that while she favors the power plant, she would not support the motion since there still seem to be too many unanswered questions regarding the mitigated negative declaration. She said she would hope the issues could be worked out before the issue goes to Council.

Commissioner Thnay said he would support the motion since it preserves the interests of the people.

The motion **carried** by the following vote:

AYES:	COMMISSIONERS	Bogue, Thnay, Sacks,
		Williams, Zermeno
NOES:	COMMISSIONER	Halliday
ABSENT:	CHAIRPERSON	Caveglia
ABSTAIN:		None

ADDITIONAL MATTERS

3. Oral Report on Planning and Zoning Matters

Planning Manager Anderly informed members of the upcoming meetings on July 12 and 26. She noted that the meeting on July 5 would be a joint work session on the General Plan with the City Council.

4. Commissioners' Announcements, Referrals

There were none made.

MINUTES

- May 31, 2001 APPROVE, with minor corrections from Commissioner Bogue.
- June 14, 2001 APPROVE

ADJOURNMENT

The meeting was adjourned by Acting Chairperson Halliday at 9:49 p.m.

APPROVED:

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Ed Bogue, Secretary
Planning Commission

ATTEST:

Edith Looney
Commission Secretary

DRAFT